Flyte Tyme Worldwide *and* Matthew D. Miller, Esq.
Case 04–CA–115437

February 4, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND HIROZAWA

On June 3, 2014, Administrative Law Judge Robert A. Giannasi issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and an answering brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs, and has decided to adopt the judge's rulings, findings, and conclusions and to adopt his recommended Order as modified and set forth in full below.[2]

The judge found, applying the Board's decision in *D. R. Horton Inc.,* 357 NLRB No. 184 (2012), enf. denied in relevant part, 737 F.3d 344 (5th Cir. 2013), that the Respondent violated Section 8(a)(1) of the Act by maintaining and enforcing an agreement that requires employees, as a condition of employment, to waive their rights to pursue class or collective actions involving employment-related claims in all forums, whether arbitral or judicial.

In *Murphy Oil USA, Inc.,* 361 NLRB No. 72 (2014), enf. denied in relevant part, __ F.3d __, 2015 WL 6457613 (5th Cir. Oct. 26, 2015), the Board reaffirmed the relevant holdings of *D. R. Horton,* supra.[3] Based on the judge's application of *D. R. Horton* and on our subsequent decision in *Murphy Oil*, we affirm the judge's rulings, findings, and conclusions[4] and adopt the recommended Order as modified and set forth in full below.[5]

[1] On August 28, 2014, subsequent to the issuance of the judge's decision, Charging Party Matthew D. Miller (an attorney representing certain current or former employees of the Respondent) filed a motion to withdraw the pending unfair practice charge on the ground that the parties had reached a non-Board settlement. By Order issued March 30, 2015, the Board denied the motion, finding that approval of the settlement would not effectuate the policies of the Act. See 362 NLRB No. 46 (2015).

[2] We shall modify the Order to conform to the violations found and to the Board's standard remedial language. We shall substitute new notices to conform to the Order as modified.

[3] We reject the Respondent's assertion that *D. R. Horton* is invalid because it was issued by a panel that included Member Becker. The appointment of Member Becker was constitutionally valid and had not expired, and thus the Board had a quorum at the time it issued *D. R. Horton*. See *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014); *Mathew Enterprise, Inc. v. NLRB*, 771 F.3d 812, 814 (D.C. Cir. 2014); *Gestamp South Carolina, L.L.C. v. NLRB*, 769 F.3d 254, 257–258 (4th Cir. 2014); *Entergy Mississippi, Inc.,* 361 NLRB No. 89, slip op. at 1–2 (2014).

[4] The Respondent argues that the complaint is time barred by Sec. 10(b) because the initial unfair labor practice charge was filed and served more than 6 months after the employees at issue became bound to the arbitration policy. We reject this argument, as did the judge, because the Respondent continued to maintain the unlawful policy during the 6-month period preceding the filing of the initial charge. The Board has long held that maintenance of an unlawful workplace rule, such as the Respondent's arbitration policy, constitutes a continuing violation that is not time-barred by Sec. 10(b). See *PJ Cheese, Inc*., 362 NLRB No. 177, slip op. at 1 (2015); *The Neiman Marcus Group*, 362 NLRB No. 157, slip op. at 2 & fn. 7 (2015). It is equally well-established that an employer's enforcement of an unlawful rule, like the arbitration policy here, independently violates Sec. 8(a)(1). See *Murphy Oil*, supra, at 19–21. The Respondent enforced its agreement on October 15, 2013, within the relevant 6-month period before the charge was filed and served.

We also reject the Respondent's argument that the policy is lawful because it includes an exemption allowing employees to file charges with "any federal, state or local government agency (e.g. claims under the National Labor Relations Act)," and thus does not, as in *D. R. Horton*, unlawfully prohibit them from collectively pursuing litigation of employment claims in all forums. We reject this argument for the reasons fully set forth in *SolarCity Corp.*, 363 NLRB No. 83 (2015).

The Respondent argues that the judge erred by failing to explicitly hold that the Respondent's employees are subject to the Federal Arbitration Act (FAA). We need not reach this issue because our decision in *Murphy Oil* applies to all employees covered by the Act, including those that are subject to the FAA.

To the extent the Respondent argues that employee Christopher Burns was not engaged in concerted activity in filing the Fair Labor Standards Act (FLSA) lawsuit in federal district court, we reject that argument. As the Board stated in *Beyoglu*, 362 NLRB No. 152 (2015), "the filing of an employment-related class or collective action by an individual is an attempt to initiate, to induce, or to prepare for group action and is therefore conduct protected by Section 7." Id., slip op. at 2. See also *D. R. Horton*, 357 NLRB No. 184, slip op. at 3. We also reject the Respondent's argument that because Burns was no longer an employee of the Respondent at the time he filed the lawsuit, the filing of the lawsuit was not protected by Sec. 7. The Board has long held that the broad definition of "employee" contained in Sec. 2(3) of the Act covers former employees. See *Briggs Mfg. Co*., 75 NLRB 569, 571 (1947). Accord *Leslie's Poolmart, Inc*., 362 NLRB No. 184, slip op. at 1 fn. 2 (2015); *PJ Cheese, Inc*., 362 No. 177, slip op. at 3 fn. 9.

Our dissenting colleague observes that the Act does not "dictate" any particular procedures for the litigation of non-NLRA claims, and "creates no substantive right for employees to insist on class-type treatment" of such claims. This is all surely correct, as the Board has previously explained in *Murphy Oil*, supra, 361 NLRB No. 72, slip op. at 2, and *Bristol Farms*, 363 NLRB No. 45, slip op. at 2 and fn. 2 (2015). But what our colleague ignores is that the Act "does create a right to *pursue* joint, class, or collective claims if and as available, without the interference of an employer-imposed restraint." *Murphy Oil*, supra, slip op. at 2 (emphasis in original). The Respondent's policy is just such an unlawful restraint.

Likewise, for the reasons explained in *Murphy Oil* and *Bristol Farms*, there is no merit to our colleague's view that finding the Agreement unlawful runs afoul of employees' Sec. 7 right to "refrain from" engaging in protected concerted activity. See *Murphy Oil*, 361 NLRB No. 72, slip op. at 18; *Bristol Farms*, 363 NLRB No. 45, slip op.

ORDER

The National Labor Relations Board orders that the Respondent, Flyte Tyme Worldwide, Mahwah, New Jersey, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Maintaining and/or enforcing a mandatory arbitration policy (the Arbitration Agreement Policy or AAP) that requires employees, as a condition of employment, to waive the right to maintain class or collective actions for employment-related claims in all forums, whether arbitral or judicial.

(b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the nationwide handbook provisions regarding the AAP in all of its forms or revise the AAP in all its forms to make it clear to employees that the AAP does not constitute a waiver of their right to maintain employment-related joint, class, or collective actions in all forums.

(b) Notify all current and former employees who were required to sign or otherwise become bound to the AAP in any form that the AAP has been rescinded or revised and, if revised, provide them a copy of the revised AAP.

(c) In the manner set forth in the remedy section of the judge's decision as amended in this decision, reimburse Christopher Burns and any other plaintiffs for any reasonable attorneys' fees and litigation expenses that they may have incurred in opposing the Respondent's motion to dismiss and compel individual arbitration, with interest.

(d) Within 14 days after service by the Region, post at its Mahwah, New Jersey facility copies of the attached notice marked "Appendix A" and all of its other facilities copies of the attached notice marked "Appendix B."[6] Copies of the notices, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employee by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix A" to all current employees and former employees employed by the Respondent at any time since April 23, 2013. If the Respondent has gone out of business or closed any facilities other than the one involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix B" to all current and former employees employed by the Respondent at those facilities at any time since October 15, 2013.

---

at 2. Nor is he correct in insisting that Sec. 9(a) of the Act requires the Board to permit individual employees to prospectively waive their Sec. 7 right to engage in concerted legal activity. See *Murphy Oil*, supra, slip op. at 17–18; *Bristol Farms*, supra, slip op. at 2.

We reject our dissenting colleague's view that the Respondent's motion to compel arbitration was protected by the First Amendment's Petition Clause. In *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731 (1983), the Court identified two situations in which a lawsuit enjoys no such protection: where the action is beyond a State court's jurisdiction because of Federal preemption, and where "a suit . . . has an objective that is illegal under federal law." 461 U.S. at 737 fn. 5. Thus, the Board may properly restrain litigation efforts such as the Respondent's motion to compel arbitration that have the illegal objective of limiting employees' Sec. 7 rights and enforcing an unlawful contractual provision, even if the litigation was otherwise meritorious or reasonable. See *Murphy Oil,* supra, slip op. at 20–21; *Convergys Corp.*, 363 NLRB No. 51, slip op. at 2 fn. 5 (2015).

[5] Consistent with our decision in *Murphy Oil*, supra, at 21, we shall order the Respondent to reimburse employee Christopher Burns and any other plaintiffs for all reasonable expenses and legal fees, with interest, that they incurred in opposing the Respondent's unlawful motion in the United States District Court to compel arbitration of their class or collective claims. See *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731, 747 (1983) ("If a violation is found, the Board may order the employer to reimburse the employees whom he had wrongfully sued for their attorneys' fees and other expenses" as well as "any other proper relief that would effectuate the policies of the Act."). Interest shall be computed in the manner prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). See *Teamsters Local 776 (Rite Aid),* 305 NLRB 832, 835 fn. 10 (1991) ('[I]n make-whole orders for suits maintained in violation of the Act, it is appropriate and necessary to award interest on litigation expenses"), enfd. 973 F.2d 230 (3d Cir. 1992).

The Respondent argues that this proceeding should be stayed pending the final outcome of the parties' FLSA litigation in the United States District Court for the District of New Jersey. This contention is moot because those parties reached a settlement agreement in that litigation.

In adopting the judge's remedy (as amended), we do not rely on *Target Co.,* 359 NLRB No. 103 (2013), *Federal Security, Inc.,* 359 NLRB No. 1 (2012), or *J.A. Croson*, 359 NLRB No. 2 (2012).

[6] If this Order is enforced by a judgment of a United State court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Within 21 days after service by the Region, file with the Regional Director for Region 4 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 4, 2016

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MISCIMARRA, dissenting in part.

In this case, my colleagues find that the Respondent's Arbitration Agreement Policy (Agreement) violates Section 8(a)(1) of the National Labor Relations Act (the Act or NLRA) because the Agreement waives the right to participate in class or collective actions regarding non-NLRA employment claims. Christopher Burns signed the Agreement, and later Burns filed a class action lawsuit against the Respondent in federal court alleging that the Respondent was violating the Fair Labor Standards Act and various New Jersey and Pennsylvania wage and hour laws. In reliance on the Agreement, the Respondent filed a Motion to Dismiss and Enforce the Parties' Agreement to Compel Arbitration. My colleagues find that the Respondent thereby unlawfully enforced its Agreement. I respectfully dissent from these findings for the reasons explained in my partial dissenting opinion in *Murphy Oil USA, Inc.*[1]

I agree that an employee may engage in "concerted" activities for "mutual aid or protection" in relation to a claim asserted under a statute other than NLRA.[2] However, Section 8(a)(1) of the Act does not vest authority in the Board to dictate any particular procedures pertaining to the litigation of non-NLRA claims, nor does the Act render unlawful agreements in which employees waive class-type treatment of non-NLRA claims. To the contrary, as discussed in my partial dissenting opinion in *Murphy Oil*, NLRA Section 9(a) protects the right of every employee as an "individual" to "present" and "adjust" grievances "at any time."[3] This aspect of Section 9(a) is reinforced by Section 7 of the Act, which protects each employee's right to "refrain from" exercising the collective rights enumerated in Section 7. Thus, I believe it is clear that (i) the NLRA creates no substantive right for employees to insist on class-type treatment of non-NLRA claims;[4] (ii) a class-waiver agreement pertaining to non-NLRA claims does not infringe on any NLRA rights or obligations, which has prompted the overwhelming majority of courts to reject the Board's position regarding class-waiver agreements;[5] and (iii)

[1] 361 NLRB No. 72, slip op. at 22–35 (2014) (Member Miscimarra, dissenting in part). The Board majority's holding in *Murphy Oil* invalidating class-action waiver agreements was recently denied enforcement by the Court of Appeals for the Fifth Circuit. *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015).

[2] I agree that non-NLRA claims can give rise to "concerted" activities engaged in by two or more employees for the "purpose" of "mutual aid or protection," which would come within the protection of NLRA Sec. 7. See *Murphy Oil*, 361 NLRB No. 72, slip op. at 23–25 (Member Miscimarra, dissenting in part). However, the existence or absence of Sec. 7 protection does not depend on whether non-NLRA claims are pursued as a class or collective action, but on whether Sec. 7's statutory requirements are met—an issue separate and distinct from whether an individual employee chooses to pursue a claim as a class or collective action. Id.; see also *Beyoglu,* 362 NLRB No. 152, slip op. at 4–5 (2015) (Member Miscimarra, dissenting). Thus, I agree with the Respondent that the filing of a class- or collective-action lawsuit by a single individual is not concerted activity. See *Beyoglu*, above.

[3] *Murphy Oil*, above, slip op. at 30–34 (Member Miscimarra, dissenting in part). Sec. 9(a) states: "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That *any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted*, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, That the bargaining representative has been given opportunity to be present at such adjustment" (emphasis added). The Act's legislative history shows that Congress intended to preserve every individual employee's right to "adjust" any employment-related dispute with his or her employer. See *Murphy Oil*, above, slip op. at 31–32 (Member Miscimarra, dissenting in part).

[4] When courts have jurisdiction over non-NLRA claims that are potentially subject to class treatment, the availability of class-type procedures does not rise to the level of a substantive right. See *D. R. Horton, Inc. v. NLRB*, 737 F.3d 344, 362 (5th Cir. 2013) ("The use of class action procedures . . . is not a substantive right.") (citations omitted), petition for rehearing en banc denied No. 12-60031 (5th Cir. 2014); *Deposit Guaranty National Bank v. Roper*, 445 U.S. 326, 332 (1980) ("[T]he right of a litigant to employ Rule 23 is a procedural right only, ancillary to the litigation of substantive claims.").

[5] The Fifth Circuit has twice denied enforcement of Board orders invalidating a mandatory arbitration agreement that waived class-type treatment of non-NLRA claims. See *Murphy Oil, Inc., USA v. NLRB*, above; *D. R. Horton, Inc. v. NLRB,* above. The overwhelming majority of courts considering the Board's position have likewise rejected it. See *Murphy Oil,* 361 NLRB No. 72, slip op. at 34 (Member Miscimarra, dissenting in part); id., slip op. at 36 fn. 5 (Member Johnson, dissenting) (collecting cases); see also *Patterson v. Raymours Furniture Co., Inc*., 96 F. Supp. 3d 71 (S.D.N.Y. 2015); *Nanavati v. Adecco USA, Inc.*, 99 F. Supp. 3d 1072 (N.D. Cal. 2015), motion to

enforcement of a class-action waiver as part of an arbitration agreement is also warranted by the Federal Arbitration Act (FAA).[6] Although questions may arise regarding the enforceability of particular agreements that waive class or collective litigation of non-NLRA claims, I believe these questions are exclusively within the province of the court or other tribunal that, unlike the NLRB, has jurisdiction over such claims.[7]

Because I believe the Respondent's Agreement was lawful under the NLRA, I would find it was similarly lawful for the Respondent to file a motion in federal court seeking to enforce the Agreement. That the Respondent's motion was reasonably based is supported by court decisions that have enforced similar agreements.[8] As the Fifth Circuit recently observed after rejecting (for the second time) the Board's position regarding the legality of class-waiver agreements: "[I]t is a bit bold for [the Board] to hold that an employer who followed the reasoning of our *D.R. Horton* decision had no basis in fact or law or an 'illegal objective' in doing so. The Board might want to strike a more respectful balance between its views and those of circuit courts reviewing its orders."[9] I also believe that any Board finding of a violation based on the Respondent's reasonably based federal court motion to compel arbitration would improperly risk infringing on the Respondent's rights under the First Amendment's Petition Clause. See *Bill Johnson's Restaurants v. NLRB,* 461 U.S. 731 (1983); *BE & K Construction Co. v. NLRB,* 536 U.S. 516 (2002); see also my partial dissent in *Murphy Oil,* above, 361 NLRB No. 72, slip op. at 33–35. Finally, for similar reasons, I believe the Board cannot properly require the Respondent to reimburse Christopher Burns and other plaintiffs for their attorneys' fees in the circumstances presented here. *Murphy Oil*, above, 361 NLRB No. 72, slip op. at 35.

Accordingly, I respectfully dissent in part.[10]

Dated, Washington, D.C. February 4, 2016

Philip A. Miscimarra, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain and/or enforce a mandatory arbitration agreement policy (the Arbitration Agreement policy or AAP) that requires employees, as a condition of employment, to waive the right to maintain class or collective actions for employment-related claims in all forums, whether arbitral or judicial.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce employees in the exercise of rights listed above.

WE WILL rescind the nationwide handbook provisions regarding the AAP in all of its forms or revise the AAP in all of its forms to make it clear to employees that the AAP does not constitute a waiver of their right to main-

certify for interlocutory appeal denied 2015 WL 4035072 (N.D. Cal. June 30, 2015); *Brown v. Citicorp Credit Services, Inc.,* No. 1:12-cv-00062-BLW, 2015 WL 1401604 (D. Idaho Mar. 25, 2015) (granting reconsideration of prior determination that class waiver in arbitration agreement violated NLRA).

[6] For the reasons expressed in my *Murphy Oil* partial dissent and those thoroughly explained in former Member Johnson's dissent in *Murphy Oil*, the FAA requires that the arbitration agreement be enforced according to its terms. *Murphy Oil,* above, slip op. at 34 (Member Miscimarra, dissenting in part); id., slip op. at 49–58 (Member Johnson, dissenting).

[7] Because I disagree with the Board's decisions in *Murphy Oil*, above, and *D. R. Horton, Inc.*, 357 NLRB No. 184 (2012), enf. denied in relevant part 737 F.3d 344 (5th Cir. 2013), and I believe the NLRA does not render unlawful arbitration agreements that provide for the waiver of class-type litigation of non-NLRA claims, I find it unnecessary to reach whether such agreements should independently be deemed lawful to the extent they "leave[ ] open a judicial forum for class and collective claims," *D. R. Horton*, 357 NLRB No. 184, slip op. at 12, by permitting the filing of complaints with administrative agencies that, in turn, may file class- or collective-action lawsuits. See *Owen v. Bristol Care, Inc.*, 702 F.3d 1050 (8th Cir. 2013).

[8] See, e.g., *Murphy Oil, Inc., USA v. NLRB,* above; *Johnmohammadi v. Bloomingdale's*, 755 F.3d 1072 (9th Cir. 2014); *D. R. Horton, Inc. v. NLRB*, above; *Owen v. Bristol Care, Inc.,* 702 F.3d 1050 (8th Cir. 2013); *Sutherland v. Ernst & Young LLP,* 726 F.3d 290 (2d Cir. 2013).

[9] *Murphy Oil, Inc., USA v. NLRB*, 808 F.3d at 1021.

[10] I agree with my colleagues that (i) Member Becker's appointment was constitutional and had not yet expired at the time the Board issued *D. R. Horton*, above; (ii) the complaint is not time-barred under Sec. 10(b) of the Act; and (iii) Christopher Burns was an employee under *Briggs Mfg. Co.*, 75 NLRB 569, 571 (1947), at the time he filed the class action lawsuit in federal court.

tain employment-related joint, class, or collective actions in all forums.

WE WILL notify all current and former employees who were required to sign the Handbook containing the AAP, or otherwise become bound to the AAP in any form, that the AAP has been rescinded or revised and, if revised, provide them a copy of the revised Handbook.

WE WILL reimburse Christopher Burns and any other plaintiffs for any reasonable attorneys' fees and litigation expenses that they may have incurred in opposing our motion to dismiss and compel individual arbitration, with interest.

FLYTE TYME WORLDWIDE

The Board's decision can be found at www.nlrb.gov/case/04-CA-115437 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain a mandatory arbitration agreement policy (the Arbitration Agreement Policy or AAP) that requires employees, as a condition of employment, to waive the right to maintain class or collective actions for employment-related claims in all forums, arbitral or judicial.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce employees in the exercise of rights listed above.

WE WILL rescind the nationwide handbook provisions regarding the AAP in all of its forms or revise the AAP in all of its forms to make it clear to employees that the AAP does not constitute a waiver of their right to maintain employment-related joint, class, or collective actions in all forums.

WE WILL notify all current and former employees who were required to sign the Handbook containing the AAP, or otherwise become bound to the AAP in any form, that the AAP has been rescinded or revised and, if revised, provide them a copy of the revised Handbook.

FLYTE TYME WORLDWIDE

The Board's decision can be found at www.nlrb.gov/case/04-CA-115437 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

Noelle M. Reese, for the General Counsel.
David G. Islinger, Esq. (Jackson Lewis, P.C.), for the Respondent.
Matthew Miller, Esq. (Swartz Swidler, LLC), for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge. The complaint in this matter alleges that Respondent violated Section 8(a)(1) of the Act by maintaining and enforcing an Arbitration Agreement Policy (AAP) that requires its employees to "forego any rights they would otherwise have to resolution of employment related disputes by collective or class action." The complaint also alleges that Respondent responded to a class action civil complaint against Respondent in the United States District Court for the District of New Jersey by filing a "Motion to Dismiss and Enforce the Parties' Agreement to Compel Arbitration" on an individual rather than on a class-wide basis, thus further violating Section 8(a)(1) of the Act. Respondent filed

an answer denying the essential allegations in the complaint.

On April 10, 2014, I granted a joint motion to submit this case to me for decision on stipulation of facts, thus waiving a hearing under Section 102.35(a)(9) of the Board's Rules and Regulations. The parties thereafter filed briefs, which I have read and considered.

Based on the entire record in this case, including the stipulation, the agreed upon exhibits, and the briefs of the parties, I make the following

FINDINGS OF FACT

The stipulation of the parties sets forth the following:

* * * *

5.(a) At all material times, Respondent, a New Jersey corporation with a facility in Mahwah, New Jersey, has been engaged in providing interstate and intrastate limousine transportation services.

(b) During the past year, Respondent, in conducting its business operations described above in subparagraph (a), received gross revenues in excess of $500,000, including gross revenues in excess of $50,000 from its interstate operations, and performed services valued in excess of $50,000 outside the State of New Jersey.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

6. Respondent's headquarters is located at 81 Franklin Turnpike, Mahwah, New Jersey and it provides limousine transportation services out of five facilities in New Jersey, Pennsylvania, Connecticut, New York and California.

7. (a) Since March 2012, Respondent has issued to its employees the "Flyte Tyme Limousine Driver's Employee Handbook & Driver's Guidebook" (Handbook), setting forth terms and conditions of employment applicable to Respondent's employees, and Respondent has maintained those terms and conditions at all material times. A copy is attached as Exhibit 5.

(b) The Handbook includes in Section 6, pages 38–40 Respondent's "Arbitration Agreement Policy" (AAP).

In pertinent part, the AAP provides that "You are required to arbitrate any and all disputes, claims, or controversies (claim) against the Company that could be brought in a court including, but not limited to, all claims arising out of your employment, the cessation of employment or any other dispute, including any claim that could have been presented to or could have been brought before any court." Such claims specifically included those under the Fair Labor Standards Act and other state and federal statutes, but were not limited to those specifically mentioned. The AAP also provides that "all claims [are] to be pursued on an individual basis only. By signing this Agreement you waive your right to commence, or be a party to, any class or collective claims or to jointly bring any claim against the Company with any other person," with exceptions not relevant here. Exhibit 6 to the stipulation.

(c) At all material times, Respondent has required as a condition of employment that its employees to sign a "General Handbook Acknowledgement" (Acknowledgement), attached as Exhibit 7.

(d) By requiring employees to adhere to the AAP in the Handbook and by requiring them to sign the Acknowledgement referred to above in subparagraphs (a) through (d), Respondent has maintained and enforced the AAP.

8.(a) On or about July 12, 2013, Matthew D. Miller, Esq., representing Respondent's employee Christopher Burns and other individuals similarly situated, filed a class action complaint in the United States District Court for the District of New Jersey alleging that Respondent was violating the Fair Labor Standards Act. A copy of the complaint is attached as Exhibit 8.

(b) On or about October 22, 2013, Miller, representing Respondent's employees Christopher Burns, Arturo Torres, William Coffield, Mark Terry, Miguel Casanova, Ronald Lee, Reginald Hayes, Dave Gardner and other individuals similarly situated, filed a "First Amended Individual, Collective Action, and Class Action Civil Complaint" (a copy is attached as Exhibit 9) against Respondent in the United States District Court for the District of New Jersey alleging that Respondent was violating the Fair Labor Standards Act, the New Jersey Wage and Hour Law, the New Jersey Wage Payment Law, the Pennsylvania Minimum Wage Act and the Pennsylvania Wage Payment and Collection Law.

(c) On October 15, 2013, Respondent filed a "Motion to Dismiss and Enforce the Parties' Agreement to Compel Arbitration" (Motion to Compel) in the United States District Court for the District of New Jersey. A copy of the Motion to Compel is attached as Exhibit 10.

(d) On October 15, 2013, Respondent filed a "Brief in Support of Defendant's Motion to Dismiss and Enforce the Parties' Agreement to Compel Arbitration." A copy is attached as Exhibit 11.

(e) On November 18, 2013, Miller filed "Plaintiffs' Memorandum in Opposition to Defendant's Motion to Dismiss and Compel Individual Arbitration." A copy is attached as Exhibit 12.

(f) On December 30, 2013, Respondent filed "Defendant's Memorandum of Law in Further Support of its Motion to Dismiss and Enforce the Parties' Agreement to Compel Arbitration." A copy is attached as Exhibit 13.

(g) On January 10, 2014, Respondent filed "Answer and Defenses to Amended Complaint filed by Plaintiffs Torres, Coffield, Terry, Casanova, Lee, Hayes, and Gardner." A copy is attached as Exhibit 14.

(h) On March 4, 2014, the Honorable Joseph A. Dickson, the United States Magistrate Judge of the United States District Court for the District of New Jersey, issued his Report and Recommendation on Defendants' Motion to Dismiss and Compel Individual Arbitration denying the Motion. A copy of the Report is attached as Exhibit 15.

(i) On March 17, 2014, Respondent filed "Defendant's Objections to Magistrate Judge Joseph Dickson's Report and Recommendations." A copy is attached as Exhibit 16.

9. On April 13, 2012, Respondent required Christopher Burns to sign the "General Handbook Acknowledgement" as a condition of employment. A copy is attached as Exhibit 17.

10. On April 6, 2012, Respondent required David Gardner to sign the "General Handbook Acknowledgement" as a condi-

tion of employment. A copy is attached as Exhibit 18.

11. Christopher Burns and David Gardner are the only employees named in the class action lawsuit referred above in paragraph 8(b) that have signed the "General Handbook Acknowledgement." The other named employees referred above in paragraph 8(b) separated from Respondent before the Handbook had issued in March 2012.

12.(a) Employee Christopher Burns worked for Respondent as a driver from in or around January 2010, to on or about June 3, 2013.

(b) Employee Arturo Torres worked for Respondent as a driver from in or around 2009 to in or around the end of 2010 and then again from in or around June 2011, to in or around the end of 2011.

(c) Employee William Coffield worked for Respondent as a driver from in or around May 2008, to in or around November 2011.

(d) Employee Mark Terry worked for Respondent as a driver from in or around May 2008, to in or around November 2011.

(e) Employee Miguel Casanova worked for Respondent as a driver from in or around April 2011 to in or around September 2011.

(f) Employee Ronald Lee worked for Respondent as a driver from in or around September 2007, to in or around November 2011.

(g) Employee Reginald Hayes worked for Respondent as a driver from in or around April 2009, to in or around May 2011.

(h) Employee David Gardner worked for Respondent as a driver from in or around February 2011, to in or around September 2012.

13. Respondent's employees are not represented by a labor organization at any of its locations.

14. The parties stipulate that if Respondent's Arbitration Agreement Policy is found to violate Section 8(a)(1) of the Act, then Respondent's enforcement of the AAP by filing its Motion to Compel described above in paragraph 8(c) likewise violates Section 8(a)(1) of the Act.

The Issues Presented[1]

1. Whether the Respondent's maintenance and enforcement of its Arbitration Agreement Policy violates Section 8(a)(1) of the Act.

2. If Respondent violated Section 8(a)(1) of the Act as alleged in the complaint, what is the appropriate remedy?

Discussion and Analysis

As indicated above, the General Counsel alleges that Respondent violated Section 8(a)(1) of the Act by maintaining its AAP, which precluded employees from filing class action arbitrations or lawsuits, and by enforcing its AAP by filing a motion to dismiss a class action lawsuit filed by its employees and to compel arbitration under the AAP. I agree and find the violations alleged.[2]

This case involves an application of the Board's decision in *D. R. Horton*, *Inc*., 357 NLRB No. 184 (2012), which was denied enforcement in relevant part, 737 F.3d 344 (5th Cir. 2013).[3] In *D. R. Horton*, the Board held that an employer violates Section 8(a)(1) of the Act by "requiring employees to waive their right to collectively pursue employment-related claims in all forums, arbitral and judicial" because "the right to engage in collective action—including collective *legal* action—is the core substantive right protected by the NLRA and is the foundation on which the Act and Federal labor policy rest." 357 NLRB No. 184, slip op. 12 (emphasis in original). The Board also concluded that its view was "consistent with the well-established interpretation of the NLRA and with core principles of Federal labor policy" and did not "conflict with the letter or interfere with the policies underlying the Federal Arbitration Act (FAA) . . . ." Id., slip op. 10. The Fifth Circuit disagreed with the Board's position on the latter point. 737 F.3d at 361–363. But I am constrained to follow Board precedent that has not been reversed by the Supreme Court or the Board itself. See *Pathmark Stores*, 342 NLRB 378 fn. 1 (2004); *Iowa Beef Packers*, 144 NLRB 615, 616 (1963), enforced in part, 331 F.2d 176 (8th Cir. 1964).[4]

Thus, I must reject Respondent's suggestion (Br. 3-11) that I decline to follow the Board's *D. R. Horton* decision and instead rely on the Fifth Circuit's denial of enforcement, as well as Administrative Law Judge Bruce Rosenstein's decision in *Chesapeake Energy Corp.,* No. 14–CA–100530 (Nov. 8, 2013), which dismissed a similar complaint because, in his view, the Board's position in *D. R. Horton* is contrary to the Supreme Court's decision in *American Express Co. v. Italian Colors Restaurant*, 133 S.Ct. 2304 (2013). Judge Rosenstein's decision is pending review by the Board and has no independent precedential value. But, in any case, I disagree with his view that *American Express* requires a decision contrary to that of the Board in *D. R. Horton*. *American Express* did not involve the substantive Section 7 right of employees to band together, including by filing class action lawsuits or arbitrations, which

[1] The issues presented section was part of the stipulation of the parties.

[2] The parties stipulated that if Respondent's AAP is found to violate the Act then Respondent's attempt to enforce the AAP by filing its motion to dismiss and compel arbitration is likewise unlawful.

[3] The court of appeals enforced that part of the Board's order dealing with a violation of Sec. 8(a)(1) because the arbitration policy in that case effectively prohibited the filing of a charge with the NLRB. That issue is not involved in this case. Thus, Respondent's contention (Br. 11) that the absence of such language in this case requires dismissal of the complaint lacks merit. The alleged violation dealing with interference with the substantive right to file class action lawsuits or arbitrations is separate from any violation involving interference with filing charges with the Board.

[4] I reject Respondent's contention (Br. 14) that the Board's *D. R. Horton* decision is "null and void" because the Board did not have a valid quorum at the time it issued its decision. The Fifth Circuit rejected a similar argument made in the *D. R. Horton* case itself, albeit for technical reasons. 737 F.3d at 350–352. More importantly, the Board has rejected the contention when it was raised in other contexts. See *Belgrove Post Acute Care*, 359 NLRB No. 77, slip op. 1, fn. 1 (2013). And, as indicated above, I am bound to follow Board law, unless or until it is reversed by the Supreme Court or the Board itself.

provided the rationale of the Board's *D. R. Horton* decision. Nor did *American Express* involve, as here, an employer who *compels* its employees to waive their Section 7 substantive rights. Likewise distinguishable for the same reasons is the Supreme Court's decision in *CompuCredit v. Greenwood*, 132 S.Ct. 665 (2012), also cited by Respondent in support of its position.[5]

Alternatively, the Respondent contends (Br. 11–12) that the agreement in this case does not fall within the purview of the *D. R. Horton* decision. In particular, Respondent contends that the instant case is distinguishable from *D. R. Horton* because here, unlike in *D. R. Horton*, the employees have filed a class action lawsuit and a district court has jurisdiction over a motion to dismiss. It also contends that this case is different than *D. R. Horton*, where the employer apparently refused to proceed with an arbitration proceeding, because here Respondent did not interfere with the class action lawsuit and simply asserted what it viewed as legitimate defenses to the lawsuit. These alleged differences do not require a different result in this case. The gravamen of the violation both here and in *D. R. Horton* is the interference with the Section 7 right of employees to pursue a class action lawsuit or arbitration.

Indeed, the General Counsel contends (Br. 15), that this case has an even stronger basis for a violation than in *D. R. Horton* because the employees of the Respondent, unlike those in *D. R. Horton*, are involved in interstate transportation. See numbered paragraphs 5 and 6 in the stipulation of the parties, set forth above. Thus, according to the General Counsel, the FAA excludes from its coverage employees such as those involved in this case. In *D. R. Horton*, the Board noted that the FAA does not apply to contracts of employment of transportation workers. 357 NLRB at slip op. 9, fn. 20, citing *Circuit City Stores, Inc. v. Adams,* 532 U.S. 105 (2001). Although Respondent's employees are indeed interstate transportation workers, it is not clear that they are exempt from coverage under the FAA.[6]

I do not reach the transportation workers issue because it is not necessary to do so to find a violation here, so long as the Board's *D. R. Horton* decision is viable in its application to all workers. Moreover, the Respondent did not brief the issue, choosing a broader attack on the Board's *D. R. Horton* decision. However, on review, the Board may decide to address this issue, after full briefing. And, of course, it would be required to address the issue, should the Board's rationale in *D. R. Horton* that Section 7 trumps the FAA be rejected.

The Respondent further contends (Br. 14–16) that continued prosecution of this case violates Respondent's First Amendment rights and the administrative proceedings should be stayed pending the final outcome of the parties' litigation in the United States District Court for the District of New Jersey. That contention also lacks merit. In *Bill Johnson's v. NLRB,* 461 U.S. 731, 747 fn. 5 (1983), the Supreme Court clearly stated that the Board could enjoin a lawsuit that seeks relief that is unlawful under the National Labor Relations Act. And it cited numerous authorities where that had been done and approved by the courts. Thus, the Board need not await a determination by state or federal courts before it finds an unfair labor practice for filing lawsuits contrary to Board law. Nor has footnote 5 of the *Bill Johnson's* decision been affected by the Supreme Court's subsequent decision in *BE & K Construction Co. v. NLRB*, 536 U.S. 516 (2002). See *J.A. Croson Co.*, 359 NLRB No. 2, slip op. 7–8 (2012).

Finally, I reject Respondent's contention (Br. 16–19) that Section 10(b) of the Act precludes any consideration of the charge and the complaint in this case. Respondent alleges that the alleged unfair labor practice occurred only at the point in time when employees signed the arbitration agreement, which would have been more than 6 months before the charge was filed in contravention of Section 10(b). But, contrary to Respondent, the unfair labor practice alleged in this case was not "inescapably grounded" on the signing of the agreements. Compare *Local Lodge 1424 v. NLRB (Bryan Manufacturing),* 362 U.S. 411 (1960). The complaint clearly states that the violation is based on "requiring employees to adhere to the AAP" and alleges specifically that Respondent "has maintained and enforced the AAP." (GC Exh. 2, par. 3(e).) Moreover, the parties have stipulated that "[a]t all material times" Respondent required that its employees adhere to the AAP as a condition of employment. There is thus no doubt that the AAP was maintained and enforced from the date the AAP was imposed as a requirement and throughout the employment of those who were bound by it. Indeed, the ultimate act of enforcement of the AAP was Respondent's filing in district court of its motion to dismiss the lawsuit and compel individual arbitrations. And that action was 8 days before the filing of the charge in this case. Paragraph 1, Exhibit 1, of the stipulation. Accordingly, there is no 10(b) impediment to the complaint. [7]

CONCLUSIONS OF LAW

1. By maintaining and enforcing its AAP and by filing a motion to dismiss a class action lawsuit filed by employees and to compel arbitration under the AAP, Respondent violated Section 8(a)(1) of the Act.

2. The above violations are unfair labor practices within the meaning of the Act.

[5] Both *CompuCredit* and *American Express* were decided after the Board's decision in *D. R. Horton*, but neither mentioned *D. R. Horton*.

[6] The Supreme Court's *Circuit City* decision mentions, as a rationale for the exemption, Congressional concern with the transportation of "goods." 532 U.S. at 121. That language seems to undercut the General Counsel's position because it is clear that Respondent's employees primarily transport passengers. On the other hand, it could be argued that, incidental to the transportation of passengers, they also transport passengers' luggage and perhaps, independently, packages. The distinction between the transportation of passengers and the transportation of goods has taken on particular significance in post *Circuit City* cases. See *Kowalewski v. Samandarov*, 590 F. Supp. 2d 477, 484 (S.D.N.Y. 2008); and *JetBlue Airways Corp. v. Stephenson*, 931 N.Y.S.2d 284, 286–287 (2011) (finding that eligibility for exemption hinged on the primary purpose of the industry, and, although JetBlue carried both passengers and cargo, the JetBlue pilots "primarily" moved passengers, and, therefore, were not exempt from the FAA)..

[7] Even apart from Respondent's action in the district court, it is clear that the mere existence of the unlawful AAP constitutes a continuing violation at all points during its existence. See *Carney Hospital*, 350 NLRB 627, 640 (2007), and cases there cited.

REMEDY

Having found that Respondent committed the unfair labor practices set forth above, I shall order it to cease and desist from such conduct and to take certain affirmative action designed to effectuate the policies of the Act. That includes the grant of litigation expenses, an order that it withdraw its motion to dismiss and compel individual arbitration, and a broad posting requirement at all of Respondent's locations. Contrary to Respondent's position (Br. 12–13), those remedies are traditional in cases such as this, where the Board finds that a lawsuit has been filed or pursued in violation of the Act. See *Allied Trades Council (Duane Reade, Inc.)*, 342 NLRB 1010, 1014 (2004); *Federal Security, Inc.*, 359 NLRB No. 1, slip op. 14, including fn. 123 (2012). See also *J.A. Croson*, cited above, at 359 NLRB No. 2, slip op. 10, citing authorities for the notion that the grant of litigation expenses for maintaining an unlawful lawsuit is a traditional Board remedy, although, in that case, the Board, citing special circumstances not present here, declined to order that particular remedy. Likewise traditional is an order requiring a notice posting at all locations where an unlawful rule or policy was in effect. See *Target Co.*, 359 NLRB No. 103, slip op. 3 (2013).

On these findings of fact and conclusions of law, and on the entire record herein, I issue the following recommended[8]

ORDER

The Respondent, Flyte Tyme Worldwide, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Maintaining or enforcing a binding arbitration agreement (the AAP) that waives the right to maintain class or collective action in all forums, arbitral and judicial.

(b) Enforcing such agreements by filing motions in court to dismiss collective action lawsuits or arbitrations and to compel individual arbitration, pursuant to the terms of the AAP.

(c) Requiring employees to sign binding arbitration agreements that prohibit collective and class litigation in all forums, arbitral and judicial.

(d) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 7 days after the Board Order, file a motion with the United States District Court for the District of New Jersey in Case No. 13-cv-04297-ES-JAD, asking to withdraw the Motion to Dismiss Plaintiff's Complaint and Enforce the Parties' Agreement to Compel Individual Arbitration of the claims of Christopher Burns, Arturo Torres, William Coffield, Mark Terry, Miguel Casanova, Ronald Lee, Reginald Hayes, David Gardner or otherwise raise the Agreement as a defense to their claims in that action.

(b) Reimburse Christopher Burns, Arturo Torres, William Coffield, Mark Terry, Miguel Casanova, Ronald Lee, Reginald Hayes, David Gardner for any legal and other expenses incurred related to their opposing the motion to dismiss and to compel individual arbitration or any other legal action taken to enforce the AAP, plus interest in accordance with Board law.

(c) Rescind or revise the nationwide handbook provisions regarding the AAP to make it clear to employees that the agreement does not constitute a waiver in all forums of their right to maintain employment-related class or collective actions.

(d) Notify employees of the rescinded or revised agreement by providing them a copy of the revised AAP or specific notification that the agreement has been rescinded.

(e) Within 14 days after service by the Region, post at all of its facilities where the AAP has been in effect copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 23, 2013.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 4 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 3, 2014.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

[8] If no exceptions are filed, as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be waived for all purposes.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain or enforce a binding arbitration agreement (the Arbitration Agreement Policy or AAP) that waives the right to maintain class or collective action in all forums, arbitral and judicial.

WE WILL NOT enforce agreements by filing motions in court to dismiss collective action lawsuits or arbitrations and to compel individual arbitration, pursuant to the terms of the AAP.

WE WILL NOT require our employees to sign binding arbitration agreements that prohibit collective and class litigation in all forums, arbitral and judicial.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL within 7 days after the Board Order, file a motion with the United States District Court for the District of New Jersey in Case No. 13-cv-04297-ES-JAD, asking to withdraw our Motion to Dismiss Plaintiff's Complaint and Enforce the Parties' Agreement to Compel Individual Arbitration of the claims of Christopher Burns, Arturo Torres, William Coffield, Mark Terry, Miguel Casanova, Ronald Lee, Reginald Hayes, David Gardner or otherwise raise the Agreement as a defense to their claims in that action.

WE WILL reimburse Christopher Burns, Arturo Torres, William Coffield, Mark Terry, Miguel Casanova, Ronald Lee, Reginald Hayes, David Gardner for any legal and other expenses incurred related to their opposing our Motion to Dismiss and to Compel Individual Arbitration or any other legal action taken by us to enforce the AAP, plus interest.

WE WILL rescind or revise our nationwide handbook provisions regarding our AAP to make it clear to our employees that the agreement does not constitute a waiver in all forums of their right to maintain employment-related class or collective actions.

WE WILL notify our employees of the rescinded or revised agreement by providing them a copy of the revised AAP or specific notification that the agreement has been rescinded.

FLYTE TYME WORKDWIDE

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/04-CA-115437 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.